IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4827 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RELEASED PRISONERS' AID SOC.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4827 of 1992

MR MC SHAH for Petitioner No. 1

MR MA BUKHARI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/02/2003

ORAL JUDGEMENT

The present petition is filed under Article 226 of the Constitution of India seeking the writ of mandamus or direction calling upon the respondents to pay the

petitioner the full deficit grant from 1982-1983 upto date and the quarterly grant from 1-12-1990 onwards upto date and also the diet charges at the rate of Rs.2/- per day per inmates.

2) The case of the petitioner was that the petitioner is a society started in or about 1925 and the obejcts of the society are, inter alia, to help and assist the released prisoners including giving assistance and aid to released prisoners in their rehabilitation in the society and to see that the released prisoners did not become harden criminals. It is further stated in the petition that prior to the formation of the State of Gujarat, the petitioner society was affiliated with Bombay State Probation and After Care Association having its office at Poona and after the formation of State of Gujarat, the activities of the said Association in relation to the State of Gujarat are being carried out by the Gujarat State Probation and After Care Association, Ahmedabad. It is further stated that the sources of income of the petitioner society upto 1st May, 1960 were public donation, quarterly grant through the Bombay State Probation and After Care Association, Poona, the deficit grant from State Government etc. After the formation of the State of Gujarat, the sources of the income of the petitioner society were public donation and grant from the State of Gujarat through Director of Social Defence, Gujarat State, Ahmedabad.

3) It is further stated that so far as the quarterly grant upto 50% of salary and 100% allowance to the Probation Officer and 50% dearness allowance of class-IV servants is concerned, the respondents have paid to the petitioner the said grant upto 30th November, 1990 and thereafter, inspite of several letters and requests the respondents have not paid any grant on that score to the petitioner. So far as the deficit grant is concerned, the respondents have paid to the petitioner deficit grant upto the year 1981-82 and thereafter the same has not been paid to the petitioner. Despite several letters and reminders having been sent by the petitioner to the respondents, diet charges were not paid to the petitioner and hence, the petitioner has raised these three different type of grievances in this petition.

4) The petitioner has attached several letters and correspondence along with the petition and emphatically stated that the petitioner has not been paid the above referred grants by the respondent authorities. The petition was admitted by this Court on 12-12-1994. However, the Court has refused to grant any interim

relief in favour of the petitioners.

5) On behalf of the respondents, an affidavit in reply was filed by the Deputy Director, Social Defence, Ahmedabad on 14th September, 1994. It was stated therein that the petitioner society's progress was not satisfactory and this was intimated to the society by the department by letter dated 8-5-1986. On inspection also, it was found that the society's progress was not satisfactory and its activities were not upto the mark. It was further stated in the affidavit in reply that there are no rules regarding the payment of diet charges but if the amount was found to be just and proper, fterr getting approval from the Government, the said amount was used to be paid towards diet charges by the Government. However, by letter dated 11-8-1986, the Government has decided not to grant approval for diet charges and hence, the society was not paid any amount toward diet charges after that date. It was further stated that the society was asked vide letter dated 23-11-1990 to retire Mr.H.A.Shah, Probation Officer, and if the society was keen on extension of his services, it should be done by approval and in accordance with the rules. However, the society could not be paid the grant since the society has granted extension of service without approval. With regard to the deficit grant, it was stated in the affidavit in reply that the sanction of the Government was necessary in view of the letter dated 11-8-1986 of the Department of Social Welfare, Gandhinagar. The amount to be paid as deficit grant was not approved and hence there was no question of paying the said amount to the petitioner society. It was further stated that the society was not eligible to receive entire grant from the Government as the society was expected to generate funds from other sources of income like private donations etc. It was further stated that the extension of service of the Probation Officer after superannuation was without approval of the Government. As per the Grant in Aid Rule 4, Sub rule 4, the approval after superannuation is necessary if the services are to be extended. Since the petitioner society has not obtained the approval for the extension of the service of the Probation Officer, the quarterly grant was not given to the petitioner society from 1-12-1990. It was further stated that in view of the Rule 17 of Grant in Aid Code Rules and in view of the Rule 27(2) (3) the reappointment of Mr.H.A.Shah, Probation Officer was not approved and hence there was no question of paying any amount towards grant and this was also conveyed to the society by letter dated 26-4-1991. It was further stated that Class-IV employees have been paid 50% of the Dearness Allowance upto November, 1990,

but the respondents have asked for certain details with regard to the payment of dearness allowance by letter dated 5-8-1991. The petitioner society has not submitted the said details to the Government and hence the said grant was not given by the Government.

6) Thereafter the petitioner has filed an Affidavit in Rejoinder in January, 1995 and an additional affidavit on 5th September, 2000. The contentions raised by the respondents in their affidavit in reply were denied by the petitioner and reiterated that the respondents were not justified in denying the grant to the petitioner. The petitioner has denied the receipt of communication from the respondents. The petitioner has also denied that its work was not satisfactory. It was also reiterated that prior approval was not necessary for extension upto 60 years.

7) After having heard the learned Advocate Mr.M.C.Shah appearing for the petitioner and Mr.M.A.Bukhari, the learned Assistant Government Pleader for the respondents and after perusing the record of the case, as well as the pleadings of the parties contained in the petition and affidavit in reply as well as in affidavit in rejoinder, I am of the view that there are disputed questions of facts involved in this petition. The respondents have time and again drawn the attention of the petitioner with regard to certain aspects of the matter and yet the petitioner society has not acted as per the instructions. Moreover, with regard to quarterly grant, deficit grant and diet charges, the respondents have made their stand clear in the affidavit in reply. It appears from the reading of the correspondence as well as the averments made in the petition that the petitioner society is mainly ventilating the grievance of Mr.H.A.Shah, Probation Officer. The letter dated 17-10-1990 produced by the petitioner at Annexure-D, page 71 to the petition, clearly reveals that the said Probation Officer, Mr.H.A.Shah has demanded an amount of Rs.84,671/- and expressed his desire that he did not want to continue as the Probation Officer, however, till the outstanding amount paid to him he would render his services as Probation Officer. This demand is at the center point of the entire claim made in this petition. The Court is of the view that the grant given by the Government is for rehabilitation of the released prisoners so that they may not indulge in future with any other antisocial activities or activities which make them harden criminals. The grant provided by the Government is not for the personal benefit of any office bearer or the employees of the society. Moreover, no details are

on record with regard to the expenditure incurred by the society, income earned from other sources and utilization of grant etc. In absence of these details and especially when the disputed questions are involved in this petition, this Court cannot go into all these aspects while exercising its writ jurisdiction under Article 226 of the Constitution of India. It requires detailed investigation of facts and appreciation of evidence. The concerned authority has taken the decision after looking to the facts and evidence on record and the said decision, unless it is found to be unlawful, illegal, malafide, discriminatory or absolutely unreasonable, cannot be assailed in the present petition. Every administrative decision cannot be made the subject matter of the judicial review. While exercising the writ jurisdiction, the Court should not substitute the decision of the authorities with that of its own.

8) In this view of the matter, this Court does not think it proper to exercise its extraordinary writ jurisdiction in the present petition by disturbing or interfering with the decision of the authorities below and hence, the petition is dismissed. Rule is discharged with no order as to costs.

(K.A.Puj, J.)

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